

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:SB:4:CLE:GL-507214-00  
DGDriscoll

date:

to: Team Manager, Appeals Division, Ohio

from: SB/SE Division Counsel, Cleveland POD

---

subject: Defending Statute of Limitation

Taxpayer: [REDACTED]

SSN: [REDACTED]

This advisory opinion is in response to your request, dated September 22, 2000, regarding the statute of limitations for the assessment of the taxpayer's [REDACTED] and [REDACTED] income tax liabilities.

**ISSUE**

Is the Consent to Extend the Time to Assess Tax, Form 872, executed by the taxpayer on [REDACTED] a valid consent so as to allow an assessment of the income tax liabilities for [REDACTED] and [REDACTED] through [REDACTED]?

**CONCLUSION**

The Consent to Extend the Time to Assess Tax, Form 872, executed by the taxpayer on [REDACTED] does not meet the requirements of the newly enacted section 6501(c)(4)(B) regarding informed notice, and, therefore, cannot be relied upon for the purpose of extending the statute of limitations for assessment of the [REDACTED] and [REDACTED] income tax liabilities. A review of the information provided establishes that the statute of limitations for the [REDACTED] income tax liability is [REDACTED] and for the [REDACTED] income tax liability was [REDACTED].

**FACTS**

The taxpayer timely filed her [REDACTED] and [REDACTED] income tax returns on [REDACTED] and [REDACTED], respectively. The Examination Division initiated an audit of these income tax returns.

On [REDACTED] the taxpayer initially extended the

statute of limitations for the assessment of her [REDACTED] income tax liability until [REDACTED] by executing a Form 872. On [REDACTED], the taxpayer further extended the statute of limitations for the assessment of her [REDACTED] income tax liability until [REDACTED] by executing a Form 872.

Upon completion of the audit, the case was referred to the Appeals Division for consideration. On [REDACTED] Appeals Officer Steven Henstridge sent by mail a request to the taxpayer to extend the statute of limitations for both the [REDACTED] and [REDACTED] income tax liabilities until [REDACTED] in order to allow the Appeals Division sufficient time to consider the case. The letter further advised the taxpayer that, if she did not extend the statute of limitations, the Appeals Division would recommend issuance of a statutory notice of deficiency. Although the request to extend the statute of limitations was made after [REDACTED] the request did not conform to the informed notice requirements of the newly enacted section 6501(c)(4)(B). The taxpayer did sign this Form 872, Consent to Extend the Time to Assess Tax, on [REDACTED].

After the Appeals Division was advised of the notice requirements of section 6501(c)(4)(B), the Appeals Division attempted to have the taxpayer execute another Form 872 for the income tax liabilities for [REDACTED] and [REDACTED] with the proper notice requirements of section 6501(c)(4)(B), by letter, dated [REDACTED]. The taxpayer did not execute this Form 872.

As a result of the taxpayer's failure to execute a Form 872 upon the proper notice required by section 6501(c)(4)(B), the Appeals Division issued the taxpayer a notice of deficiency for the taxable years [REDACTED] and [REDACTED] on [REDACTED].

The taxpayer failed to petition the notice of deficiency to the United States Tax Court within 90 days or [REDACTED]. As a result, the Internal Revenue Service was authorized to assess the asserted income tax deficiencies for the taxable years [REDACTED] and [REDACTED].

On [REDACTED], the Cleveland Appeals Office forwarded the case to Cincinnati APS unit for closing and assessment. At this time, the Form 872, dated [REDACTED], remained attached to the income tax returns for [REDACTED] and [REDACTED]. This Form 872 indicated that the statute of limitations for both [REDACTED] and [REDACTED] was [REDACTED]. Additionally, the transmittal memorandum transmitting the file to APS also stated that the statute of limitations was [REDACTED].

Relying upon a determination that the statute of limitations

was [REDACTED], personnel in the APS unit did not immediately assess the income tax liabilities. Upon processing the tax returns for assessment on [REDACTED], the personnel determined that there was a question as to the validity of the [REDACTED] Form 872, and that the correct statute of limitations for the taxable year [REDACTED] may have been [REDACTED]. As such, no assessment has been made at this time pending a determination of the correct statute of limitations.

#### ANALYSIS

Section 6501(a) of the Code provides generally that a tax may be assessed within three years after the date on which the return for such tax was filed. Section 6501(c)(4) goes on to provide that a taxpayer and the government may mutually consent in writing to extend the time for assessment. RRA98 added a requirement to 6501(c)(4) under subsection 6501(c)(4)(B) that, prior to extending a statute of limitation through a written consent, the secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the statute of limitations. This new notice requirement applies to requests to extend the statute of limitation made after December 31, 1999.

In a memorandum, dated March 31, 2000, the Office of Chief Counsel provided guidelines for determining whether a statute of limitation request made after December 31, 1999 without the required section 6501(c)(4)(B) should be defended. The guidelines provide that Chief Counsel will defend the validity of an extension if written documentation in the administrative file establishes that the extensions were requested in one of the following scenarios:

1. Service personnel requested the extension by using Form Letter 907(DO) (Rev. 2-2000), Letter 907 (SC) (Rev. 12-1999) or Letter 967 (Rev. 12-1999);
2. Service personnel furnished the taxpayer or representative with a copy of any of these specific revisions of Publication 1035: Rev. 12-1999, Rev. 8-1996, or Rev. 8-1987;
3. Service personnel orally advised the taxpayer or representative of all the provisions of section 6501(c)(4)(B) and documented this action contemporaneously in writing on Form 9984 or elsewhere in the administrative file;
4. The taxpayer or representative declined to sign an unrestricted extension, Form 872-A, and instead signed a restricted extension that either limited the extension to certain issues or certain time periods;

5. The taxpayer refused to sign a restricted extension, Form 872, as originally prepared by the Service, and instead signed one containing additional restrictions, such as a shorter time period or fewer issues. See IRM 22.8.4(1).

A review of the facts of this case establishes the following. The notice requirement of section 6501(c)(4)(B) was applicable at the time the Form 872 extension was requested on [REDACTED]. None of the safe harbor provisions listed above apply in the facts of this case. Furthermore, there is no information in the file that would suggest that the taxpayer was advised of her right to refuse to extend the statute of limitation. As such, it is this office's opinion that the Form 872 extension executed by the taxpayer on [REDACTED] was not a valid extension of the statute of limitation.

Having determined that the [REDACTED] Form 872 extension was not a valid extension of the statute of limitation, this office has determined that the correct statute of limitations for the [REDACTED] income tax liabilities is [REDACTED] and for the [REDACTED] income tax liability was [REDACTED].

Section 6213(a) provides that, upon the Internal Revenue Service issuing a notice of deficiency, the Internal Revenue Service is prohibited from assessing the tax liability in question for the 90 days (or 150 days in the case of a notice of deficiency addressed to a person outside the United States) in which the taxpayer may petition the United States Tax Court. Section 6503 provides that the running of the period of limitations for the assessment of tax shall be suspended for the period during which the Internal Revenue Service is prohibited from making an assessment and for 60 days thereafter. In summary, the statute of limitations for the assessment of tax is suspended for 150 days upon the issuance of a notice of deficiency. Furthermore, the 150 days suspends the statute of limitations and does not merely run from the date of the notice of deficiency. Ramirez v. United States, 538 F.2d 888 (Ct. Cl. 1976), cert. denied, 429 U.S. 1024 (1976); Meridian Wood Products Co., Inc. v. United States, 725 F.2d 1183 (9<sup>th</sup> Cir. 1984). As such, the statute of limitations for the taxable year [REDACTED] is 150 days from [REDACTED] or [REDACTED]. For the taxable year [REDACTED], the statute of limitations is 151 days from [REDACTED] or [REDACTED]. The additional day given for the [REDACTED] statute of limitation is due to the fact that the notice of deficiency was issued on [REDACTED], one day before the normal three-year statute of limitations initially expired.

If this office can be of any further assistance in this matter, please do not hesitate to contact the undersigned at (216) 522-3380.

RICHARD A. WITKOWSKI  
Area Counsel

By: \_\_\_\_\_

DENNIS G. DRISCOLL  
Associate Area Counsel